

On March 21, 2011, Roland Ayres (“Plaintiff”) filed the Complaint against the Delaware State Police (“DSP”) and the State of Delaware (the “State”), asserting claims for personal injury, intentional infliction of emotional distress, and civil rights in violation of 42 U.S.C. § 1983. Plaintiff alleged that at or about March 20, 2009, there was a robbery at an unidentified business somewhere

in or around Wilmington, Delaware. The owner of the business reported to DSP that he observed the robber and provided the troopers with a description. Later that day, Plaintiff was ordering breakfast at an Arby's restaurant located at 4000 Concord Pike, Wilmington, Delaware 19803. While he was ordering, two then unidentified DSP troopers entered the Arby's, tackled, beat, and arrested Plaintiff because he fit the description the business owner had given DSP. Then, the troopers took Plaintiff to the business to be identified by the owner. The owner said that Plaintiff was not the robber, and the troopers released Plaintiff from custody. Plaintiff further averred that during the time he was in custody, the troopers used racial epithets and assaulted Plaintiff, causing Plaintiff to suffer personal injuries and emotional distress. Plaintiff did not name the two unidentified DSP troopers as defendants in the complaint. On June 23, 2011, Defendants filed an Answer. In the Answer, Defendants admit that the DSP troopers apprehended Plaintiff, but deny the use of excessive force and racial epithets, and deny that Plaintiff suffered any injuries.

On August 5, 2011, Plaintiff filed the instant Motion to Amend the Complaint, seeking to add "Trooper Yeldell and Corporal Muevina" individually as defendants. In Plaintiff's brief supporting the motion, Plaintiff argues simply that the requirements of Court of Common Pleas Civil Rule ("Rule") 15(c) concerning amending pleadings and relation back have been met and therefore the Motion to Amend the Complaint should be granted.

On August 23, 2011, the defendants filed a response opposing Plaintiff's Motion to Amend the Complaint, arguing that amendment is prohibited by Rule 15(c). Specifically, Defendant argues that the amendment is precluded by Rule 15(c) because amendment would prejudice the troopers because the two year statute of limitations on the claims has already expired. Further, Defendant argues that the troopers did not know, nor should they have known that, but for a mistake concerning the identity of the proper defendants, they would have been named as parties in the Complaint. Defendant also argues that amendment should be denied because Plaintiff did not

provide a copy of the proposed amended complaint with its filings on the motion. Finally, Plaintiff notes that Plaintiff did not move to amend within 120 days of service of the Complaint as permitted by CCP Civil Rule 4(j). As such, Defendant argues Plaintiff's motion be denied.

On September 16, 2011, the Court heard oral argument on the motion from the parties. Plaintiff argued that he had satisfied the requirements of Rule 15(c) because he did not know the identities of the two DSP troopers when the Complaint was filed. Counsel for Plaintiff represented on the record that he made several requests for the identities of the troopers to the State of Delaware before the expiration of the two year statute of limitations and that it was only after the suit was filed that Counsel for the defendants produced the identities of the troopers. Further, Plaintiff's Counsel noted that the Court's e-filing system rejected the motion when it was filed with the proposed amended Complaint attached. Defendant argued that Plaintiff has not met the requirements of Rule 15(c), because Plaintiff was not mistaken as to the identities of the troopers when he filed the Complaint.

Discussion

Rule 15(a) generally governs motions to amend pleadings and provides that a party may amend a pleading without leave of court at any time before a responsive pleading is served, or if no responsive pleading is required, within 20 days after the pleading sought to be amended is served.¹ After this time period expires, pleadings may only be amended with leave of the court or upon written consent of the adverse party.² Leave of the court "shall be freely given when justice so requires."³ This rule is liberally interpreted to permit amendment at all stages of the proceedings unless the party opposing amendment shows that it will be seriously prejudiced.⁴ "The purpose of

¹ *CCP Civ. R. 15(a)*.

² *Id.*

³ *Id.*

⁴ *Paul v. Chromalytics Corp.*, 343 A.3d 622, 625 (Del. Super. 1975).

the Rule is to encourage the disposition of litigation on the merits.”⁵ The requirements of Rule 15 are liberally construed to promote this policy.⁶

Rule 15(c) applies in cases where the movant seeks to amend the complaint after the expiration of the statute of limitations on the claim(s). Specifically, Rule 15(c) establishes “a series of requirements that must be satisfied if the movant wishes to render the amendment effective as of the time of the filing of the original complaint.”⁷

Rule 15(c) applies to the instant motion because Plaintiff filed this motion after the expiration of the two year statute of limitations on the asserted claims. “No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained.”⁸ This two year statute of limitations also applies to federal civil rights claims based on 42 U.S.C. § 1983.⁹ In the instant case, the alleged injury occurred on March 20, 2009. Plaintiff filed the Complaint on March 21, 2011. Plaintiff filed the motion to amend on August 5, 2011. Therefore, the instant motion is governed by Rule 15(c), because it was filed outside of the two year statute of limitations for Plaintiff’s claims.

Where, as in the case *sub judice*, the moving party seeks to add new parties, the analysis of motions to amend pleadings is controlled by Rule 15(c)(3).¹⁰ Rule 15(c)(3) requires that the moving party meet the following conditions:

- (1) The claim or defense asserted in the amended pleading arose out of the same conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading;

⁵ *Grand Ventures, Inc. v. Whaley*, 632 A.2d 63, 72 (Del. 1993).

⁶ *E.K. Geyser, Co. v. Blue Rock Shopping Center, Inc.*, 229 A.2d 499, 501 (Del. Super. 1967).

⁷ *Mullen v. Alarmguard of Delmarva, Inc.*, 625 A.2d 258, 263 (Del. 1993).

⁸ 10 Del. C. § 8119.

⁹ *Hall v. Yacuzzi*, 723 A.2d 839 (Del. 1998).

¹⁰ *Mullen*, 625 A.2d at 263.

- (2) Within the period provided by law for commencing the action against the party (i.e. the statute of limitations), the party to be brought in by amendment received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; and
- (3) Within the period provided by law for commencing the action against the party, the party to be brought in by the amendment knew or should have known that but for a mistake concerning the identity of the party the suit would have been brought against the party.¹¹

Whether the proposed amendment satisfies these conditions is a matter within the Court's discretion.¹²

The defendants do not dispute, nor could they reasonably dispute that the claim asserted in the amended complaint arose out of the same conduct, transaction or occurrence set forth in the original complaint. The original complaint arose out of an allegedly unprovoked attack and use of racial slurs against Plaintiff by two then unnamed DSP troopers. The proposed amended complaint seeks only to name the two previously unknown DSP troopers. Therefore, the first condition required by Rule 15(c)(3) is satisfied.

The troopers received adequate notice before the expiration of the statute of limitations such that they will not be prejudiced in maintaining a defense on the merits. Notice of the "institution of the action" means that the parties sought to be added received notice of the lawsuit, not merely notice of a claim or allegation.¹³ However, such notice need not be formal, include service of process, nor must it be in writing.¹⁴ For example, in *Dobson v. McKinley*, the court granted Plaintiff leave to amend the complaint pursuant to Rule 15(c)(3) to include an existing third party defendant as a defendant in the underlying case.¹⁵ The court found that the third party defendant was sufficiently on notice of the claim within the limitations period because the amended complaint was

¹¹ *Id.* at 264; CCP Civ. R. 15(c).

¹² *Id.* (citing *Annone v. Kawasaki Motor Corp.*, 316 A.2d 209 (Del. 1974)).

¹³ *Id.* at 265.

¹⁴ *Id.*

¹⁵ *Dobson v. McKinley*, 2009 WL 891056, *4 (Del. Super. Mar. 31, 2009).

identical to the third party complaint.¹⁶ The court noted that the third party defendant would not be prejudiced because it was already actively engaged in discovery, litigation, and settlement discussions concerning the identical third party claim with identical underlying facts.¹⁷ In other words, the party sought to be added would not be prejudiced by amendment because it was already defending the same claim based on the same facts, albeit against a different party.

Here, the Complaint was filed against the State and DSP, alleging identical facts and causes of action sought to be asserted against the two troopers individually in the amended complaint. The original complaint was filed within the statute of limitations. The State and DSP are both represented by Mr. McTaggart, who also opposes the instant motion on behalf of Trooper Yeldell and Corporal Muevina. While the troopers themselves may have not received formal notice of the institution of the action within the limitations period, formal notice is not required by Rule 15(c)(3).¹⁸ The Court is satisfied that the troopers received sufficient notice within the statute of limitations period based on the identity of counsel, facts, and interest between the State, DSP, and the troopers sought to be added in the amended complaint.

Finally, before the statute of limitations expired, the troopers knew or should have known that but for a mistake concerning their identity, suit would have been brought against them by Plaintiff. “When a plaintiff wishes to add a new party...the Court should ‘focus on the new party’s appreciation of the fact that the failure to include it in the original complaint was an error and not deliberate strategy.’”¹⁹ This requirement was intended to ensure that before the expiration of the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Johnson v. Paul’s Plastering, Inc.*, 1999 WL 744427, *2 (Del. Super. July 30, 1999) (citing 3 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 15.19[3][d] (3d ed. 1999)).

statute of limitations, the defendant knew that it was a “distinct possibility” it would be sued by the plaintiff.²⁰

In *Brown v. City of Wilmington Zoning Bd. of Adjustment*, the court examined numerous Delaware court decisions regarding the “mistake” prong of the Rule 15(c)(3) analysis.²¹ The court concluded that:

The courts declined to find a mistake whenever the party could not demonstrate an intent to include the unnamed party before the limitations period expired...plaintiffs all knew the identities of the putative defendants/respondents at the time they filed suit, yet they did not demonstrate an intent to sue those parties until after the limitations period ran. In contrast, the plaintiff in *Mullen* intended to sue all parties involved in decisions concerning the safety of Alarmguard’s products prior to the expiration of the statute of limitations, but was misled as to the identity of those parties by testimony given by a party defendant at deposition.²²

In other words, the dispositive consideration in the Rule 15(c)(3) “mistake” analysis is: whether the plaintiff demonstrated to the party later sought to be added by amendment the intent to pursue claims against all possible defendants before the statute of limitations expired; and did not initially sue the party later sought to be added by amendment because either it was misled or made an unintentional error rather than a strategic choice to only sue the originally named parties.

Review of the record establishes that Plaintiff here meets the conditions of the “mistake” prong of Rule 15(c)(3). Plaintiff demonstrated its intent to add the troopers as defendants within the statute of limitations when Plaintiff’s counsel repeatedly contacted the State and DSP, but was not given the trooper’s names. As such, Plaintiff did not make a “strategic choice” to omit the troopers from the initial complaint. Rather, Plaintiff was unable to include the troopers individually because the State and DSP refused to disclose their identities. This finding furthers the policy underlying Rule 15, to encourage the resolution of cases on their merits.

²⁰ *Id.*

²¹ *Brown v. City of Wilmington Zoning Bd. of Adjustment*, 2007 WL 1828261, *12 (Del. Super. Jun. 25, 2007).

²² *Id.*

Defendants cite *Lovett v. Pietlock* in support of their argument that Plaintiff has not satisfied the “mistake” requirement of Rule 15(c)(3). In *Lovett*, the defendant filed a tort and civil rights claims against DSP and one individually named state trooper.²³ Over four months after the statute of limitations expired, Plaintiff moved to amend the complaint to add three additional state troopers as defendants.²⁴ The court found that Plaintiff did not adequately establish that the troopers sought to be added as defendants knew or should have known that but for a mistake in their identities, they would have been brought into the suit by amendment because the only reason proffered by Plaintiff for failure to file the motion to amend within the statute of limitations was “a vague assertion concerning some error with the Court’s e-filing system.”²⁵ Unlike the plaintiff in *Lovett*, the plaintiff in the instant case made efforts to ascertain the officers identities before the statute of limitations expired, and the State and DSP refused to give Plaintiff this information until after he filed the Complaint. Therefore, *Lovett* does not bar amendment in this case. Plaintiff has established the requirements for relation back under Rule 15(c) and therefore is permitted to amend the complaint.

Additionally, amendment is not barred because Plaintiff failed to attach a copy of the proposed amended complaint to the motion papers. Defendant cites the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, which provide: “[a] party who moves to amend a pleading shall attach to the motion...[t]he proposed amended pleading as amended.”²⁶ The Federal District Court for the District of Delaware has refused to consider motions to amend the complaint that failed to comply with this rule.²⁷

The Court of Common Pleas Civil Rules, however, contains no such provision. Rather, Rule 15 provides that “[a] party serving an amended pleading shall indicate plainly in the amended

²³ *Lovett v. Pietlock*, 2011 WL 149349, *1 (Del. Super. Jan. 5, 2011).

²⁴ *Id.*

²⁵ *Id.* at *4.

²⁶ D. Del. R. 15.1.

²⁷ *Brinkenmeier v. Graco Children’s Products, Inc.*, 684 F. Supp.2d 548, 549 (D. Del. 2010).

pleading in what respect the amendment differs from the pleading which it amends.”²⁸ Plaintiff complied with this provision by including the following in its brief on the motion: “Plaintiff...hereby moves this Honorable Court for an Order amending the Complaint to add Trooper Yeldell and Corporal Mulevina Individually, and as Agents for the Delaware State Police and State of Delaware.”²⁹ Therefore, amendment is not barred because Plaintiff failed to include a copy of the proposed amended complaint to the motion papers.

Finally, Rule 4(j) does not bar amendment. Rule 4(j) governs the time limit for service of summons and the complaint and requires service of summons and the complaint be made on the defendant within 120 days of the filing of the complaint.³⁰ Amending pleadings is governed by Rule 15, not Rule 4(j). Therefore, Rule 4(j) is not relevant in the Court’s analysis.

For the foregoing reasons, Plaintiff’s Motion to Amend the Complaint to add Trooper Yeldell and Corporal Mulevina as defendants is hereby GRANTED.

SO ORDERED

Alex J. Smalls
Chief Judge

²⁸ *CCP Civ. R. 15(aa)*.

²⁹ Pl’s. Br. at 1.

³⁰ *CCP Civ. R. 4(j)*.